

RESOLUTION NO. 12-88

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and curbs, a copy of which are attached hereto and made a part hereof as Composite Exhibit "1".

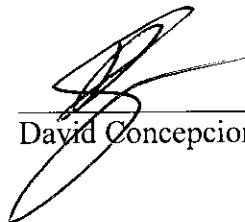
PASSED AND ADOPTED this 26th day of June, 2012.



Isis Garcia Martinez
Council President

Attest:

Approved on this 28th day of june, 2012.



David Concepcion, City Clerk



Mayor Carlos Hernandez

Approved as to form and legal sufficiency:



William M. Grodnick, City Attorney

S:\WMG\LEGISLAT\RESO\Resos 2012\FDOTmedianimprovementwest49streetwest12avenue.docx

Resolution was adopted by a unanimous vote with Councilmembers, Caragol, Casals-Muñoz, Cue-Fuente, Garcia-Martinez, Gonzalez, Hernandez and Lozano voting "Yes".

RESOLUTION NO. 12-88

RESOLUTION OF THE MAYOR AND THE CITY COUNCIL OF THE CITY OF HIALEAH, FLORIDA AUTHORIZING THE MAYOR AND CITY CLERK, AS ATTESTING WITNESS, ON BEHALF OF THE CITY, TO ENTER INTO AND A CONSTRUCTION AGREEMENT AND A MEMORANDUM OF UNDERSTANDING WITH THE STATE OF FLORIDA, DEPARTMENT OF TRANSPORTATION (FDOT) FOR PAINTING THE MEDIAN AND CURB SURFACE OVER WEST 49 STREET, FROM WEST 4 AVENUE AND WEST 20 AVENUE, AND MAINTAINING THE DECORATIVE MEDIANS AND CURBS, A COPY OF WHICH ARE ATTACHED HERETO AND MADE A PART HEREOF AS COMPOSITE EXHIBIT "1".

WHEREAS, the City of Hialeah finds it in its best interest of the health, safety and welfare of the community to enter into a Construction Agreement and a Memorandum of Understanding and Utility Work by Highway Contractor Agreement with FDOT to paint the median and curb surface over West 49 Street, from West 4 Avenue to West 20 Avenue, and to maintain the decorative medians and curbs.

NOW, THEREFORE, BE IT RESOLVED BY THE MAYOR AND THE CITY COUNCIL OF THE CITY OF HIALEAH, FLORIDA, THAT:

Section 1: The foregoing facts and recitations contained in the preamble to this resolution are hereby adopted and incorporated by reference as if fully set forth herein.

Section 2: The City Council of Hialeah, Florida hereby authorizes the Mayor and the City Clerk, as attesting witness, on behalf of the City, to enter into a Construction Agreement and a Memorandum of Understanding with the State of Florida, Department of Transportation, for painting the median and curb surface over West 49 Street, from West 4 Avenue and West 20 Avenue, and maintaining the decorative medians

**FLORIDA DEPARTMENT OF TRANSPORTATION
DECORATIVE PAINT TO MEDIAN AND CURB SURFACE
MAINTENANCE MEMORANDUM OF AGREEMENT
WITH THE
CITY OF HIALEAH**

This **AGREEMENT**, entered into on _____, 20__, by and between the **STATE OF FLORIDA DEPARTMENT OF TRANSPORTATION**, an agency of the State of Florida, hereinafter called the **DEPARTMENT**, and the **CITY OF HIALEAH**, a municipal corporation of the State of Florida, hereinafter called the **CITY**, and collectively referred to as the **PARTIES**.

RECITALS:

- A. The **DEPARTMENT** has jurisdiction over State Road (S.R.) 932/West 49th Street at the intersection of West 12th Avenue/Ludlam/Milander Avenue (M.P. 2.095 - M.P. 2.245), which is located within the limits of the **CITY**; and
- B. The **CITY**, pursuant to Construction Agreement/Permit # 2012 C 691 010, has drafted plans for beautification improvements on S.R. 932/West 49th Street at the intersection of West 12th Avenue/Ludlam/Milander Avenue, the limits of which are described in the attached Exhibit 'A' (the **PROJECT LIMITS**), which by reference shall become a part of this **AGREEMENT**; and
- C. The **CITY** will apply decorative paint (polymer modified color topping) over the medians and curbs in accordance with the Construction Agreement/Permit # 2012 C 691 010 (the "Project"); and
- D. The **PARTIES** to this **AGREEMENT** mutually recognize the need for entering into an agreement designating and setting forth the responsibilities of each party with regards to the maintenance of the decorative paint to medians and curbs installed pursuant to the Project; and
- E. The **CITY**, by Resolution No. _____, dated _____, attached hereto as Exhibit 'B', which by reference shall become a part of this **AGREEMENT**, desires to enter into this **AGREEMENT** and authorizes its officers to do so.

NOW, THEREFORE, for and in consideration of the mutual benefits contained herein and other good and valuable consideration, the parties covenant and agree as follows:

1. RECITALS

The recitals in this **AGREEMENT** are true and correct, and are incorporated herein by reference and made a part hereof.

2. DEPARTMENT RESPONSIBILITIES

The **PARTIES** agree that by executing this **AGREEMENT** all maintenance responsibilities pertaining to the decorative paint to medians and curbs shall be assigned to the **CITY** in perpetuity upon the Department's issuance of the Notice of Final Acceptance of the Project to its contractor.

3. CITY'S MAINTENANCE RESPONSIBILITIES

The **CITY** shall maintain the decorative paint to medians and curbs in accordance with all applicable Department guidelines, standards, and procedures, which shall include but shall not be limited to the Maintenance Rating Program Handbook, as may be amended from time to time. Additionally, the **CITY** shall maintain the decorative paint to medians and curbs in accordance with the guidelines and procedures, as may be amended from time to time, and in accordance with the standards set forth in the Project Plans, and in the Project Specifications and Special Provisions. The **CITY'S** maintenance obligations shall include but not be limited to:

- a) Sweep the decorative painted surfaces periodically to keep them free of debris and to maintain an aesthetically pleasing condition. A light pressure washing may be necessary for heavy stain removal or cleaning.
- b) Remove and properly dispose of litter from decorative painted surfaces.
- c) For any routine repairs or replacement due to noticeable color scarring or surface deterioration of the decorative painted surfaces, the product authorized installer should be contacted.
- d) When remedial action is required in accordance with the above requirements, the **CITY** shall complete all necessary repairs at its own expense within ninety (90) days of the date the deficiency is identified.
- e) The **DEPARTMENT** will not be responsible for replacing the treatment following any construction activities

in the vicinity of the treatment.

- f) The **CITY** shall conduct annual condition surveys for color scarring and surface deterioration of the concrete surfaces.

The **DEPARTMENT** may, at its sole discretion, perform periodic inspection of the decorative paint to medians and curbs to ensure that the **CITY** is performing its duties pursuant to this **AGREEMENT**. The **DEPARTMENT** shall share with the **CITY** its inspection findings, and may use those findings as the basis of its decisions regarding maintenance deficiencies, as set forth in Section 4 of this Agreement. The **CITY** is responsible for obtaining copies of all applicable rules, regulations, policies, procedures, guidelines, and manuals, and the Project Specification and Special Provisions, as may be amended from time to time.

4. MAINTENANCE DEFICIENCIES

If at any time it shall come to the attention of the **DEPARTMENT** that the **CITY's** responsibilities as established herein are not being properly accomplished pursuant to the terms of this **AGREEMENT**, the **DEPARTMENT** may, at its option, issue a written notice, in care of the **CITY MAYOR**, to notify the **CITY** of the maintenance deficiencies. From the date of receipt of the notice, the **CITY** shall have a period of thirty (30) calendar days, within which to correct the cited deficiency or deficiencies. Receipt is determined in accordance with Section 5 of this **AGREEMENT**.

If said deficiencies are not corrected within this time period, the **DEPARTMENT** may, at its option, proceed as follows:

- a) Maintain the decorative medians and curbs, or a part thereof and invoice the **CITY** for expenses incurred; or
- b) Terminate this Agreement in accordance with Section 7, remove any or all the decorative paint to medians and curbs located within the **PROJECT LIMITS**, and charge the **CITY** the reasonable cost of such removal.

5. NOTICES

All notices, requests, demands, consents, approvals, and other communication which are required to be served or given hereunder, shall be in writing and shall be sent by certified U.S. mail, return receipt requested, postage prepaid, addressed to the party to receive such notices as follows:

To the DEPARTMENT: Florida Department of Transportation
1000 Northwest 111 Avenue, Room 6205
Miami, Florida 33172-5800
Attn: District Maintenance Engineer

To the CITY: City of Hialeah
560 E 8th Avenue
Hialeah, Florida 33013
Attention: City Mayor

Notices shall be deemed to have been received by the end of five (5) business days from the proper sending thereof unless proof of prior actual receipt is provided.

6. REMOVAL, RELOCATION OR ADJUSTMENT OF THE DECORATIVE PAINT TO MEDIANS AND CURBS

- a) The Parties agree that the decorative paint to medians and curbs addressed by this **AGREEMENT** may be removed, relocated or adjusted at any time in the future, at the **DEPARTMENT'S** sole discretion. In the event that the **DEPARTMENT** relocates or adjusts the decorative medians and curbs, the **CITY'S** maintenance responsibilities will survive the relocation or adjustment, as long as the materials remain within the **PROJECT LIMITS**.

7. TERMINATION

This **AGREEMENT** is subject to termination under any one of the following conditions:

- a) By the **DEPARTMENT**, if the **CITY** fails to perform its duties under Section 3 of this **AGREEMENT**, following the thirty (30) days written notice, as specified in Section 4 of this **AGREEMENT**.
- b) In accordance with Section 287.058(1)(c), Florida Statutes, the **DEPARTMENT** shall reserve the right to unilaterally cancel this **AGREEMENT** if the **CITY** refuses to allow public access to any or all documents, papers, letters, or other materials made or received by the **CITY** pertinent to this **AGREEMENT** which are subject to provisions of Chapter 119, of the Florida Statutes.
- c) If mutually agreed to by both parties, upon thirty (30) days advance notice. An agreement to terminate shall be valid only if made in writing and executed with the same formalities as this **AGREEMENT**.

8. TERMS

- a) The effective date of this **AGREEMENT** shall commence upon execution by the **PARTIES**. This **AGREEMENT** shall continue in perpetuity or until termination as set forth in Section 7.
- b) For purposes of performing its duties under this **AGREEMENT**, the **CITY** shall insert the following clause into any contracts entered into by the **CITY**, with vendors or contractors:

Vendors/Contractors

- i. Shall utilize the U.S Department of Homeland Security's E-Verify system to verify the employment eligibility of all new employees hired by the vendor/contractor during the term of the **AGREEMENT**; and
 - ii. Shall expressly require subcontractors performing work or providing services pursuant to the state contract to likewise utilize the U.S. Department of Homeland Security's E-Verify system to verify the employment of all new employees hired by the subcontractors during the **AGREEMENT** term.
- c) This writing embodies the entire agreement and understanding between the parties hereto and there are no other agreements and understanding, oral or written, with reference to the subject matter hereof that are not merged herein and superseded hereby.
- d) This **AGREEMENT** shall not be transferred or assigned, in whole or in part, without the prior written consent of the **DEPARTMENT**.
- e) This **AGREEMENT** shall be governed by and constructed in accordance with the laws of the State of Florida. Any provisions of this **AGREEMENT** found to be unlawful or unenforceable shall be severable and shall not affect the validity of the remaining portions of the **AGREEMENT**.
- f) Venue for any and all actions arising out of or in connection to the interpretation, validity, performance or breach of this **AGREEMENT** shall lie exclusively in a state court of proper jurisdiction in Leon County, Florida.

- g) A modification or waiver of any of the provisions of this **AGREEMENT** shall be effective only if made in writing and executed with the same formality as this agreement.
- h) The section headings contained in this **AGREEMENT** are for reference purposes only and shall not affect the meaning or interpretation hereof.
- i) No term or provision of this **AGREEMENT** shall be interpreted for or against either Party because the Party or its legal representative drafted the provision.
- j) The **DEPARTMENT** is a state agency, self-insured and subject to the provisions of Section 768.28, Florida Statutes, as may be amended from time to time. Nothing in this **AGREEMENT** shall be deemed or otherwise interpreted as waiving the **DEPARTMENT'S** sovereign immunity protections, or as increasing the limits of liability as set forth in Section 768.28, Florida Statutes.

9. INDEMNIFICATION

Subject to Section 768.28, Florida Statutes, as may be amended from time to time, the **CITY** shall promptly indemnify, defend, save and hold harmless the **DEPARTMENT**, its officers, agents, representatives and employees from any and all losses, expenses, fines, fees, taxes, assessments, penalties, costs, damages, judgments, claims, demands, liabilities, attorneys fees, (including regulatory and appellate fees), and suits of any nature or kind whatsoever caused by, arising out of, or related to the **CITY'S** exercise or attempted exercise of its responsibilities as set out in this **AGREEMENT**, including but not limited to, any act, action, neglect or omission by the **CITY**, its officers, agents, employees or representatives in any way pertaining to this agreement, whether direct or indirect, except that neither the **CITY** nor any of its officers, agents, employees or representatives will be liable under this provision for damages arising out of injury or damages directly caused or resulting from the sole negligence of the **DEPARTMENT**.

The **CITY'S** obligation to indemnify, defend and pay for the defense of the **DEPARTMENT**, or at the **DEPARTMENT'S** option, to participate and associate with the **DEPARTMENT** in the defense and trial of any claim and any related settlement negotiations, shall be triggered immediately upon the **CITY'S** receipt of the **DEPARTMENT'S** notice of claim for indemnification. The notice of claim for indemnification shall be deemed received if the **DEPARTMENT** sends the notice in accordance with the formal notice mailing requirements set forth in Section 5 of this **AGREEMENT**. The **DEPARTMENT'S** failure to notify the **CITY** of a claim shall not release the **CITY** of the above duty to defend and indemnify the **DEPARTMENT**.

The **CITY** shall pay all costs and fees related to this obligation and its enforcement by the **DEPARTMENT**. The indemnification provisions of this section shall survive termination or expiration of this **AGREEMENT**, but only with respect to those claims that arose from acts or circumstances which occurred prior to termination or expiration of this **AGREEMENT**.

The **CITY'S** evaluation of liability or its inability to evaluate liability shall not excuse the **CITY'S** duty to defend and indemnify the **DEPARTMENT** under the provisions of this section. Only an adjudication or judgment, after the highest appeal is exhausted, specifically finding the Department was solely negligent shall excuse performance of this provision by the **CITY**.

IN WITNESS WHEREOF, the parties hereto have caused these presents to be executed the day and year first above written.

CITY OF HIALEAH

**STATE OF FLORIDA
DEPARTMENT OF TRANSPORTATION:**

BY: _____
CITY Mayor

BY: _____
District Director of
Transportation Operations

ATTEST: _____ (SEAL)
CITY Clerk

ATTEST: _____
Executive Secretary

LEGAL REVIEW:

BY: William Grodnick
CITY Attorney

BY: _____
District Chief Counsel

EXHIBIT 'A'

PROJECT LIMITS

Below are the limits of the decorative paint to medians and curbs to be maintained under this **AGREEMENT**.

State Road Number: S.R. 932/West 49th Street

Agreement Limits: At the intersection of West 12th
Avenue/Ludlam/Milander Avenue
(M.P. 2.095 - M.P. 2.245)

County: Miami-Dade

EXHIBIT 'B'

CITY OF HIALEAH RESOLUTION

To be herein incorporated once ratified by the CITY Council.

FILE

STATE OF FLORIDA DEPARTMENT OF TRANSPORTATION
CONSTRUCTION AGREEMENT

2012 C 691 010

RECEIVED
PERMITS OFFICE

APR 17 2012

DEPT OF TRANSPORTATION
MIAMI, FLORIDA

850-040-89
MAINTENANCE
OGC - 04/12
Page 1 of 4

THIS CONSTRUCTION AGREEMENT (this "Agreement") is made and entered into by and between the State of Florida, Department of Transportation, 1000 NW 111 Ave Miami, Florida 33172 (hereinafter referred to as the "DEPARTMENT") and City of Hialeah Streets Department 5601 E 8th Ave, Building No. 4, Hialeah, Florida 33013 (hereinafter referred to as the "Construction Coordinator").

WITNESSETH:

WHEREAS, the DEPARTMENT is authorized and required by Section 334.044(13), Florida Statutes, to coordinate the planning, development, and operation of the State Highway System; and

WHEREAS, pursuant to Section 339.282, Florida Statutes, the DEPARTMENT may contract with a property owner to finance, construct, and improve public transportation facilities; and

WHEREAS, the Construction Coordinator proposes to construct certain improvements to SR 932 Section 1 & 2 Subsection N/A from Begin MP 450' east of NW 67 Ave/W 12 Ave to End MP 220' west of NW 67 Ave/W 12 Ave (MP 2.095 - 2.245) Local Name NW 103rd St/W 49th St & NW 67th Ave/W 12th Ave located in Miami-Dade County (hereinafter referred to as the "Project"); and

WHEREAS, the parties desire to enter into this Agreement for the Construction Coordinator to make improvements within the DEPARTMENT'S right of way to construct the Project, which will become the property of the Department upon acceptance of the work.

NOW, THEREFORE, based on the premises above, and in consideration of the mutual covenants contained herein, the parties hereby agree that the construction of the Project shall proceed in accordance with the following terms and conditions:

1. The recitals set forth above are specifically incorporated herein by reference and made a part of this Agreement. The Construction Coordinator is authorized, subject to the conditions set forth herein, to enter the DEPARTMENT'S right of way to perform all activities necessary for the construction of See attached exhibit A scope of services/special provisions.

2. The Project shall be designed and constructed in accordance with the latest edition of the DEPARTMENT'S Standard Specifications for Road and Bridge Construction and DEPARTMENT Design Standards and Manual of Uniform Traffic Control Devices ("MUTCD"). The following guidelines shall apply as deemed appropriate by the DEPARTMENT: the DEPARTMENT Structures Design Manual, AASHTO Guide Specifications for the Design of Pedestrian Bridges, AASHTO LRFD Bridge Design Specifications, the DEPARTMENT Plans Preparation Manual ("PPM") Manual for Uniform Minimum Standards for Design, Construction and Maintenance for Streets and Highways (the "Florida Green Book") and the DEPARTMENT Traffic Engineering Manual. The Construction Coordinator will be required to submit any construction plans required by the DEPARTMENT for review and approval prior to any work being commenced. Should any changes to the plans be required during construction of the Project, the Construction Coordinator shall be required to notify the DEPARTMENT of the changes and receive approval from the DEPARTMENT prior to the changes being constructed. The Construction Coordinator shall maintain the area of the project at all times and coordinate any work needs of the DEPARTMENT during construction of the project.

3. The Construction Coordinator shall notify the DEPARTMENT a minimum of 48 hours before beginning construction within DEPARTMENT right of way. The Construction Coordinator shall notify the DEPARTMENT should construction be suspended for more than 5 working days.

4. Pursuant to Section 7-13 of the DEPARTMENT Standard Specifications, the Construction Coordinator is required to possess a general liability insurance naming the DEPARTMENT as an additional insured and insuring the DEPARTMENT and the Construction Coordinator against any and all claims for injury or damage to persons and property, and for the loss of life or property that may occur (directly or indirectly) by reason of the Construction Coordinator accessing DEPARTMENT right of way and the Construction Coordinator's performance of the Project. Such amount shall be carried in a minimum amount of not less than one million ~~SEE ATTACHMENT(S)~~ and 00/100 Dollars (\$ 1,000,000.00) for bodily injury or death to any one person or any number of persons in any one occurrence, and not less than one hundred thousand ~~SEE ATTACHMENT(S)~~ and 00/100 Dollars (\$ 100,000.00) for property damage, or a combined coverage of not less than N/A ~~SEE ATTACHMENT(S)~~ and 00/100 Dollars (\$ 0.00).

Additionally, the Construction Coordinator shall supply the DEPARTMENT with a payment and performance bond in the amount of the estimated cost of construction, provided by a surety authorized to do business in the State of Florida, payable to the DEPARTMENT. The bond and insurance shall remain in effect until completion of construction and acceptance by the DEPARTMENT. Prior to commencement of the Project and on such other occasions as the DEPARTMENT may reasonably require, the Construction Coordinator shall

provide the DEPARTMENT with certificates documenting that the required insurance coverage is in place and effective. If the Construction Coordinator is a local governmental entity they will be exempt from these requirements.

5. The Construction Coordinator shall be responsible for monitoring construction operations and the maintenance of traffic ("MOT") throughout the course of the project in accordance with the latest edition of the DEPARTMENT Standard Specifications, section 102. The Construction Coordinator is responsible for the development of a MOT plan and making any changes to that plan as necessary. The MOT plan shall be in accordance with the latest version of the DEPARTMENT Design Standards, Index 600 series. Any MOT plan developed by the Construction Coordinator that deviates from the DEPARTMENT Design Standards must be signed and sealed by a professional engineer. MOT plans will require approval by the DEPARTMENT prior to implementation.

6. The Construction Coordinator shall be responsible for locating all existing utilities, both aerial and underground, and for ensuring that all utility locations be accurately documented on the construction plans. All utility conflicts shall be fully resolved directly with the applicable utility.

7. The Construction Coordinator will be responsible for obtaining all permits that may be required by other agencies or local governmental entities.

8. It is hereby agreed by the parties that this Agreement creates a permissive use only and all improvements resulting from this agreement shall become the property of the DEPARTMENT. Neither the granting of the permission to use the DEPARTMENT right of way nor the placing of facilities upon the DEPARTMENT property shall operate to create or vest any property right to or in the Construction Coordinator, except as may otherwise be provided in separate agreements. The Construction Coordinator shall not acquire any right, title, interest or estate in DEPARTMENT right of way, of any nature or kind whatsoever, by virtue of the execution, operation, effect, or performance of this Agreement including, but not limited to, the Construction Coordinator's use, occupancy or possession of DEPARTMENT right of way. The parties agree that this Agreement does not, and shall not be construed to, grant credit for any future transportation concurrency requirements pursuant to chapter 163, Florida Statutes.

9. The Construction Coordinator shall perform all required testing associated with the design and construction of the project. Testing results shall be made available to the DEPARTMENT upon request. The DEPARTMENT shall have the right to perform its own independent testing during the course of the Project.

10. The Construction Coordinator shall exercise the rights granted herein and shall otherwise perform this Agreement in a good and workmanlike manner, with reasonable care, in accordance with the terms and provisions of this Agreement and all applicable federal, state, local, administrative, regulatory, safety and environmental laws, codes, rules, regulations, policies, procedures, guidelines, standards and permits, as the same may be constituted and amended from time to time, including, but not limited to, those of the DEPARTMENT, applicable Water Management District, Florida Department of Environmental Protection, Environmental Protection Agency, the Army Corps of Engineers, the United States Coast Guard and local governmental entities.

11. If the DEPARTMENT determines a condition exists which threatens the public's safety, the DEPARTMENT may, at its discretion, cause construction operations to cease and immediately have any potential hazards removed from its right of way at the sole cost, expense, and effort of the Construction Coordinator. The Construction Coordinator shall bear all construction delay costs incurred by the DEPARTMENT.

12. All work and construction shall be completed within 90 days of the date of the last signature affixed to this agreement. If construction is not completed within this time, the DEPARTMENT may make a claim on the bond. The DEPARTMENT may terminate this Agreement at any time, with or without cause and without DEPARTMENT liability to the Construction Coordinator, by providing sixty (60) days prior written notice of termination to the Construction Coordinator.

13. The Construction Coordinator shall be responsible to maintain and restore all features that might require relocation within the DEPARTMENT right of way.

14. The Construction Coordinator will be responsible for clean up or restoration required to correct any environmental or health hazards that may result from construction operations.

15. Upon completion of construction, the Construction Coordinator will be required to submit to the DEPARTMENT final as-built plans and an engineering certification that construction was completed in accordance to the plans. Prior to the termination of this Agreement, the Construction Coordinator shall remove its presence, including, but not limited to, all of the Construction Coordinator's property, machinery, and equipment from DEPARTMENT right of way and shall restore those portions of DEPARTMENT right of way disturbed or otherwise altered by the Project to substantially the same condition that existed immediately prior to the commencement of the Project.

16. If the DEPARTMENT determines that the Project is not completed in accordance with the provisions of this Agreement, the DEPARTMENT shall deliver written notification of such to the Construction Coordinator. The Construction Coordinator shall have thirty (30) days from the date of receipt of the DEPARTMENT'S written notice, or such other time as the Construction Coordinator and the DEPARTMENT mutually agree to in writing, to complete the Project and provide the DEPARTMENT with written notice of the same (the "Notice of Completion"). If the Construction Coordinator fails to timely deliver the Notice of Completion, or if it is determined that the Project is not properly completed after receipt of the Notice of Completion, the DEPARTMENT, within its discretion may: 1) provide the Construction

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Coordinator with written authorization granting such additional time as the DEPARTMENT deems appropriate to correct the deficiency(ies); or 2) correct the deficiency(ies) at the Construction Coordinator's sole cost and expense, without DEPARTMENT liability to the Construction Coordinator for any resulting loss or damage to property, including, but not limited to, machinery and equipment. If the DEPARTMENT elects to correct the deficiency(ies), the DEPARTMENT shall provide the Construction Coordinator with an invoice for the costs incurred by the DEPARTMENT and the Construction Coordinator shall pay the invoice within thirty (30) days of the date of the invoice.

17. Nothing in this Agreement shall be deemed or otherwise interpreted as waiving the DEPARTMENT'S sovereign immunity protections, or as increasing the limits of liability as set forth in Section 768.28, Florida Statutes. The DEPARTMENT'S liability for breach of this Agreement is limited in amount and shall not exceed the limitations of liability for tort actions as set forth in Section 768.28(5), Florida Statutes.

18. All formal notices, proposed changes and determinations between the parties hereto and those required by this Agreement, including, but not limited to, changes to the notification addresses set forth below, shall be in writing and shall be sufficient if mailed by regular United States mail, postage prepaid, to the parties at the contact information listed below.

19. The Construction Coordinator shall not cause any liens or encumbrances to attach to any portion of DEPARTMENT right of way.

20. This Agreement shall be governed by the laws of the State of Florida in terms of interpretation and performance. Venue for any and all actions arising out of or in any way related to the interpretation, validity, performance or breach of this Agreement shall lie exclusively in a state court of appropriate jurisdiction in Leon County, Florida.

21. The Construction Coordinator may not assign, pledge or transfer any of the rights, duties and obligations provided in this Agreement without the prior written consent of the DEPARTMENT'S District Secretary or his/her designee. The DEPARTMENT has the sole discretion and authority to grant or deny proposed assignments, with or without cause. Nothing herein shall prevent the Construction Coordinator from delegating its duties hereunder, but such delegation shall not release the Construction Coordinator from its obligation to perform this Agreement.

22. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns. Nothing in this Agreement is intended to confer any rights, privileges, benefits, obligations or remedies upon any other person or entity except as expressly provided for herein.

23. This instrument, together with the attached exhibits and documents made part hereof by reference, contain the entire agreement of the parties and no representations or promises have been made except those that are specifically set out in this Agreement. All prior and contemporaneous conversations, negotiations, possible and alleged agreements and representations, covenants, and warranties with respect to the subject matter of this Agreement, and any part hereof, are waived, merged herein and superseded hereby.

24. By their signature below, the parties hereby acknowledge the receipt, adequacy and sufficiency of consideration provided in this Agreement and forever waive the right to object to or otherwise challenge the same.

25. The failure of either party to insist on one or more occasions on the strict performance or compliance with any term or provision of this Agreement shall not be deemed a waiver or relinquished in the future of the enforcement thereof, and it shall continue in full force and effect unless waived or relinquished in writing by the party seeking to enforce the same.

26. No term or provision of this Agreement shall be interpreted for or against any party because that party or that party's legal representative drafted the provision.

27. If any section, paragraph, clause or provision of this Agreement is adjudged by a court, agency or authority of competent jurisdiction to be invalid, illegal or otherwise unenforceable, all remaining parts of this Agreement shall remain in full force and effect and the parties shall be bound thereby so long as principle purposes of this Agreement remain enforceable.

28. A modification or waiver of any of the provisions of this Agreement shall be effective only if made in writing and executed with the same formality as this Agreement.

29. The Construction Coordinator agrees to promptly indemnify, defend, save and hold harmless the DEPARTMENT and all of its officers, agents and employees from and pay all demands, claims, judgments, liabilities, damages, fines, fees, taxes, assessments, penalties, costs, expenses, attorneys' fees and suits of any nature or kind whatsoever caused by, or arising out of or related to the performance or breach of this Agreement by the Construction Coordinator, including, without limitation, performance of the Project within the DEPARTMENT'S right of way. The term "liabilities" shall specifically include, without limitation, any act, action, neglect or omission by the Construction Coordinator, its officers, agents, employees or representatives in any way pertaining to this Agreement, whether direct or indirect, except that neither the Construction Coordinator nor any of its officers, agents, employees or representatives will be liable under this provision for damages arising out of injury or damages directly caused or resulting from the sole negligence, intentional or wrongful acts of the DEPARTMENT or any of its officers, agents or employees. The Construction Coordinator shall notify the DEPARTMENT in writing immediately upon becoming aware of such liabilities. The Construction Coordinator's inability to evaluate liability, or its evaluation of liability, shall not excuse performance of the provisions of this paragraph. The indemnities assumed by the Construction Coordinator shall survive termination of

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this Agreement. The insurance coverage and limits required in this Agreement may or may not be adequate to protect the DEPARTMENT and such insurance coverage shall not be deemed a limitation on the Construction Coordinator's liability under the indemnities granted to the DEPARTMENT in this Agreement.

30. Construction Coordinator:

1. shall utilize the U.S. Department of Homeland Security's E-Verify system to verify the employment eligibility of all new employees hired by the Construction Coordinator during the term of the contract; and
2. shall expressly require any subcontractors performing work or providing services pursuant to the state contract to likewise utilize the U.S. Department of Homeland Security's E-Verify system to verify the employment eligibility of all new employees hired by the subcontractor during the contract term.

CONSTRUCTION COORDINATOR CONTACT INFORMATION

Name Jose Sanchez Title Streets Engineer
Office No. 305.687.2611 Cell 786.269.1378 Email josanchez@hialeahfl.gov

Name _____ Title _____
Office No. _____ Cell _____ Email _____

Mail Address 5601 East 8th Avenue (Building No. 4) Hialeah, Florida 33013

IN WITNESS WHEREOF, Construction Coordinator and the DEPARTMENT have executed this Agreement for the purposes herein expressed on the dates indicated below.

CONSTRUCTION COORDINATOR

By: [Signature] (Signature)
Jose Sanchez (Print Name)
Streets Engineer (Title)
04/10/12 (Date)

DEPARTMENT OF TRANSPORTATION

By: _____ (Signature)

(Print Name)

(Title)

(Date)

Legal Review:

[Signature]

Approved as to form and
legal sufficiency:

William Grodnick
William M. Grodnick
City Attorney

2012 C 691 010

SPECIAL PROVISIONS FOR SPECIAL PERMIT # 2012 C 691 010

SECTION # 87038 / STATE ROAD # 932

CONSTRUCTION AGREEMENT FOR ROADWAY IMPROVEMENTS AT NW 103 ST. / W. 49 ST. AND W. 12 AVE. INTERSECTION MEDIAN

1. COORDINATE PRE CONSTRUCTION MEETING WITH MR. RONALD SYLVAIN AT TELEPHONE (305) 640-7171, RONALD.SYLVAIN@DOT.STATE.FL.US AT LEAST FORTY-EIGHT (48) HOURS PRIOR TO COMMENCEMENT OF WORK.
2. SUBMIT A DETAILED LANE CLOSURE FORM, NOTING WORK AND TIME PHASES THRU THE LANE CLOSURE INFORMATION SYSTEM (LCIS) AT [HTTP://GIS.ATECTRANS.NET/LCIS/](http://GIS.ATECTRANS.NET/LCIS/) . THE LANE CLOSURE REQUEST SHALL BE APPROVED BY THE DEPARTMENT AT LEAST 2 WEEKS PRIOR TO BEGINNING WORK WITHIN THE FDOT RIGHT OF WAY.
3. The Department reserves the right to access any portion of the State Right of Way as necessary for maintenance, construction or monitoring activities and there may be a department representative on location, which will reserve the right to increase or decrease the approved time frames.
4. ***** The proposed improvements under this agreement shall be maintained by the City of Hialeah at no cost to the Department as outlined on the executed Maintenance Memorandum of Agreement (MMOA) between the City of Hialeah and the Department. *****
5. Working hours within the F.D.O.T. right-of-way shall be between the hours of 9:30 a.m. and 3:30 p.m., or as directed by the department representative prior to commencement of work.
6. THE MAINTENANCE OF TRAFFIC (MOT) PLANS MAY BE REVISED AT THE TIME OF THE PRE-CONSTRUCTION MEETING. MOT MUST BE IN ACCORDANCE WITH THE CURRENT EDITION OF THE FDOT ROADWAY AND TRAFFIC DESIGN STANDARDS – INDEX 600, AND M.U.T.C.D. AS A MINIMUM.
7. SIDEWALK SHALL BE RESTORED WITH FULL 4 INCHES THICK FLAGS WITH EXPANSION MATERIAL AND DETECTABLE DOMES FOR HANDICAP RAMPS ACCORDING TO THE F.D.O.T. ROADWAY AND TRAFFIC DESIGN STANDARDS – INDICES 300, 304, AND 310 (CURRENT EDITION) AND CONSTRUCTED ACCORDING TO THE F.D.O.T. STANDARDS SPECIFICATIONS FOR ROAD AND BRIDGE CONSTRUCTION – SECTION 522.
8. IN THE EVENT ROADWAY PAVEMENT IS DAMAGE, SHALL BE RESTORED AT THE PERMITTED EXPENSE BY MILLING AND RESURFACING TO MATCH OR EXCEED EXISTING PAVEMENT CONDITIONS, AND WILL BE IN FULL LANE WIDTH.
9. All portions of the state right-of-way disturbed in the construction of the proposed work shall be restored to F.D.O.T. Specifications.
10. WHEN THE PERMITTEE'S OPERATIONS ENCOUNTER OR EXPOSE ANY ABNORMAL CONDITION WHICH MAY INDICATE THE PRESENCE OF A HAZARDOUS WASTE, TOXIC WASTE, OR CONTAMINANTS, SUCH OPERATIONS SHALL CEASE IMMEDIATELY IN THE VICINITY OF THE ABNORMAL CONDITION AND:
 - a) IMMEDIATELY CONTACT THE ASSISTANT CONTAMINATION IMPACT COORDINATOR AT THE ENVIRONMENTAL MANAGEMENT OFFICE AT 1000 NW 111 AVE MIAMI FLORIDA 33172 (TELEPHONE NUMBER (305) 470-5138) AND INFORM HER OF THE FIELD ASSESSMENT RESULTS.
 - b) PROVIDE THE DEPARTMENT COPIES OF CONTAMINATION-RELATED DELIVERABLES SUBMITTED TO ENVIRONMENTAL REGULATORY AGENCIES. THE REPORTS ARE TO BE SUBMITTED TO THE DISTRICT CONTAMINATION IMPACT COORDINATOR AT 1000 NW 111TH AVENUE, MIAMI, FLORIDA 33172-5800, ROOM # 6109.

EVERY EFFORT SHALL BE MADE BY THE PERMITTEE TO MINIMIZE THE SPREAD OF ANY CONTAMINATION INTO UNCONTAMINATED AREAS. NOTIFICATION OF PERSONNEL AND SELECTION OF COURSE ACTION SHALL BE IN ACCORDANCE WITH

2012 C 691 010

SPECIAL PROVISIONS FOR SPECIAL PERMIT # 2012 C 691 010

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PROCEDURE 650-030-010-B, RESOLUTION OF RIGHT-OF-WAY CONTAMINATION ISSUES. UNDER NO CIRCUMSTANCES WILL THE PERMITTEE RESUME OPERATIONS IN THE AFFECTED AREA UNTIL SO DIRECTED BY THE DEPARTMENT'S INSPECTOR.

- 11. In the event that it becomes necessary to accommodate passage of any emergency vehicle, passage shall be made available by clearing all personnel and staged equipment that may interfere with its passage immediately.**
- 12. This permit does not grant approval for the installation, modification, or other construction of any utility connection(s) within the F.D.O.T. Right-of-way. A separate utility connection permit application by the utility owner must be submitted to and approved by the Department prior to beginning any work in conjunction with any proposed utility connection(s).**
- 13. The Permittee shall provide and maintain safe temporary access to all adjacent property at all times and shall maintain accommodations for intersecting and crossing traffic within the constructions Zone. No road or street crossing shall be blocked or unduly restricted as determined by the engineer.**
- 14. The permittee will ensure that no unsafe area(s) for pedestrian and motorist will remain during any time of the construction. They shall be protected in accordance with the F.D.O.T. Roadway and Traffic Design Standards - Index series 600.**
- 15. In the event that sod is damaged during construction, it must be replaced and maintained until the sod is established.**
- 16. Existing FDOT drainage system shall be protected at all times by the Permittee. Any damage to the FDOT drainage system (structures or pipes) shall be repaired / replaced by the Permittee at no cost to the Department.**
- 17. A copy of this permit and plans will be on the job site at all times during the construction of this facility.**
- 18. Permittee is cautioned that utilities may be located within the construction area.**
- 19. Validity of this permit is contingent upon permittee obtaining necessary permits from all other agencies involved.**
- 20. Final restoration shall be coordinated with the Department representative. All portions of the state right-of-way shall be restored within thirty (30) days upon completion of the permitted installation.**
- 21. Beginning any work within the F.D.O.T. right-of-way associated with this permit constitutes acceptance of these conditions.**

APPLY CONCRETE
COLOR PATCH TO
MEDIAN & CURB

W 49TH ST

RIGHT OF WAY SHALL
BE MAINTAINED WITHIN THE
F.D.O.T.
CONCRETE

RECEIVED
FIDOT OFFICE

APR 17 2012

DEPT OF TRANSPORTATION
MIAMI, FLORIDA

2012-06-10 010



Description:

Euro-Coat is a polymer modified stampable thin topping material consisting of 2 components; powder and liquid admixture to make a mortar that can be troweled, sprayed or squeegeed onto the surface according to the thickness required to obtain the proper height to produce the desired profile, usually not more than 1/2 inch in thick. Product comes in 18 colors using iron oxides to obtain light stable durable color finish, or combining colors to obtain different decorative effects. The material sets to support stamping in 5 to 10 minutes, allowing for faster production as a continued process. With the use of liquid stamp release, applied to the molds and the surface is ready for final treatment in one hour. Once the operation is completed and the surfaces are dry it can be sealed. It can also be used as a skin coat that can be broomed or troweled to rehabilitate old colored or gray concrete.

Uses:

Product is used for decorative finishes over existing concrete for interior and exterior applications including drive-ways, sidewalks, curb and gutters, patios, balconies and many commercial applications providing a new finish.

Limitations:

Product is not designed to repair the substrate. All defects must be repaired prior to installation. Not recommended for more than 1/2 inch thick. Test an area to determine proper bond and adjusting for setting times by cooling all components on very hot days. Adding water will lighten the colors and produce color inconsistencies. Product must be sealed before use, specially under wheel traffic. Choose one of our sealers such as DuraCoat or Crystal Seal.

Installation:

Start with a floor that is clean and free from grease, gum and contaminants, sealers and coatings must be removed. Mix in a clean bucket by slowly adding powder to the polymer using a drill paddle mixer until is thoroughly mixed and free of lumps. Apply mix to the floor and spread evenly over the surface, working from the inside out, leaving room to apply finishes. Work in a continued process mixing, pouring and finishing until operation is completed. As soon as it is safe to walk on the work without marring the finished surfaces, antiquing and other finishes can be applied. Wait until surfaces have dried to seal the work. If using solvent based sealers, test an area first to determine if a reaction can be seen, otherwise wait until fully cured. Product can be used as a color overlay to rehabilitate old concrete by providing an alternative. For broom the surface as soon as after the coating is installed to avoid pulling or tearing the surface. Mix a full unit at one time, partial mixed amounts will turn into an inconsistent color result.

Packaging:

Supplied in 50 pound pails including powder and liquid.

Compliance:

4000 psi in 7 days. Meets ASTM C-979 for iron oxide colors

Clean-up:

Clean tools and equipment with soap and water.

Safety:

Clean all tools with soap and water. Avoid breathing dust and avoid prolonged skin contact. Use eye, skin and suitable respirator specially when mixing product. Keep away from children and pets and dispose of pails and unused product properly. Contains Portland cement and silica that can cause burns and respiratory irritation.

Warranty: When product is used according to directions, warranty is limited to the refund of the purchase price if deemed defective at manufacture. This product is intended for industrial professional use by competent tradesmen. Builders Construction Products shall not be liable to the purchaser or any third party for costs of labor direct or indirect, and incidental or consequential damages related to the use or suitability of this product. No other warranties are implied. Responsible disposal of used products and packaging is the responsibility of the purchaser and or end user.

Builders Construction Products
2761 NW 19th St, Pompano Beach, FL 33069
Tel: (954) 657-8812 Fax: (954) 657-8631



We care about the environment

Builders
CONSTRUCTION PRODUCTS

Technical Data